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Paper No. 18

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JUL 17 2003

In re Application of	:	
Robert J. Fite	:	DECISION ON PETITION
Application No. 09/476,219	:	
Filed: December 30, 1999	:	
Attorney Docket No. 884.182US1	:	

This is a decision on the petition filed December 9, 2002, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

A non-final action was mailed on August 27, 2001, setting forth a three-month period of response. Applicant responded with an Amendment filed on January 24, 2002 (certificate of mailing dated November 30, 2001) along with payment of a one-month extension of time. The examiner considered the amendment to be non-compliant because it failed to meet the requirements of 37 C.F.R. 1.121, mailed a Notice of Non-Compliant Amendment on March 7, 2003 and set forth a one-month period of response. Applicant filed a Response to the Notice of Non-Compliant Amendment on June 17, 2002 (certificate of mailing dated June 6, 2002) along with a one-month extension of time.

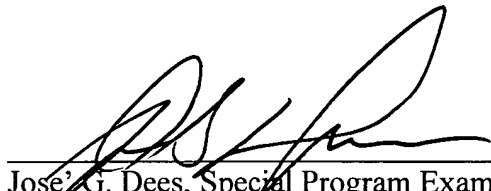
Petitioner asserts that the responses were timely filed as evidenced by copies of the papers filed and copies of the postcard receipts indicating receipt in the Patent and Trademark Office.

The review of the application file reveals that the Amendment filed January 24, 2002, along with payment of a one-month extension of time was timely filed and placed in the file. The Response to the Notice of Non-Compliant Amendment and the extension of time fee were also received and matched with the file. However, the Response to the Notice of Non-Compliant Amendment was overlooked by either the examiner or the technical support staff and consequently the application was held to be abandoned. The application is not abandoned in fact.

Further review of the file indicates that the one-month extension of time fee does not cover the time period needed for a proper response. A two-month extension of time was needed and in accordance with the instructions for payment of fees, a two-month extension of time will be charged to Deposit Account No. 19-0743.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the technical support staff for processing the Response to the Notice of Non-Compliant Amendment and for charging the two-month extension of time fee. From there, it will be returned to the examiner for further prosecution.



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